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September 29, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: May 14, 2008
Case Number: TSO-0633

This decision concerns the eligibility of XXXXXXXXXX, (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ This decision considers whether, on the basis of the evidence in this proceeding, the Individual's request for an access authorization should be granted. For the reasons stated below, I find that the Individual should be granted an access authorization.

I. BACKGROUND

The present proceeding began when the Individual's employer requested a security clearance on behalf of the Individual. A subsequent background investigation revealed the Individual had three alcohol-related arrests. In July 1999, the Individual received a citation for being a Minor in Possession of Alcohol. On November 9, 2002, the Individual was arrested and charged with Driving Under the Influence of Alcohol (DUI). On May 12, 2007, the Individual was arrested and charged with Public Intoxication. Exhibit 1 at 3-4. The Local Security Office (LSO) conducted a personnel security interview (PSI) of the Individual on December 12, 2007, to address the derogatory information.² During this PSI, the Individual indicated that his fiancée had expressed concern about his May 12, 2007, arrest and his alcohol consumption. Exhibit 5 at 40, 80, 86. The Individual also admitted that he had driven while intoxicated on at least six occasions. *Id.* at 77-79. Accordingly, this PSI failed to resolve the security concerns raised by the above-mentioned derogatory information. The LSO requested the Individual to undergo a

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

² The transcript of this PSI appears in the record as Exhibit 5.

forensic psychiatric examination by a DOE consultant psychiatrist (the DOE Psychiatrist). On January 29, 2008, the DOE Psychiatrist conducted an examination of the Individual. Exhibit 3 at 2. In addition to conducting this examination, the DOE Psychiatrist reviewed selected portions of the Individual's security file and selected medical records. On February 13, 2008, the DOE Psychiatrist issued a report in which she opined that the Individual met the criteria for alcohol abuse set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition-Text Revised (DSM-IV-TR), and used alcohol habitually to excess.³ *Id.* at 20. The DOE Psychiatrist further opined that the Individual's alcohol abuse is a mental condition which causes, or may cause, a significant defect in judgment and reliability. *Id.* at 21. The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated or reformed from his alcohol abuse or habitual excessive drinking. *Id.*

Soon thereafter, the LSO initiated an administrative review proceeding. *See* 10 C.F.R. § 710.9. The LSO issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter) under two potentially disqualifying criteria set forth at 10 C.F.R. § 710.8(h) and (j).⁴

Specifically, the Notification Letter alleges that the Individual:

1. Uses alcohol habitually to excess, and suffers from an alcohol abuse;
2. Engaged in bingeing episodes;
3. Has a history of three alcohol-related arrests;
4. Has a fiancée who has expressed concerns about his alcohol consumption; and
5. Has admitted that he has operated a motor vehicle under the influence of alcohol on at least six occasions.

Statement of Charges at 1-2.

The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. The LSO forwarded this request to the Director of the Office of Hearings and Appeals (OHA), who appointed me as Hearing Officer.

At the hearing, the LSO presented one witness: the DOE Psychiatrist. The Individual presented seven witnesses: his fiancée, the supervisor of his alcohol education program (the educational supervisor), his father, his mother, his former supervisor, a close friend, and his fiancée's mother.

³ The DOE Psychiatrist also found that the Individual met the DSM-IV-TR criteria for Post-Traumatic Stress Disorder (PTSD). Exhibit 3 at 18. The DOE Psychiatrist characterized the Individual's PTSD as "chronic" and "mild." *Id.* at 20. The DOE Psychiatrist opined that the Individual's PTSD "is not a concern at the present time." *Id.* at 18. Accordingly, the Notification Letter does not allege that the Individual's PTSD raises a security concern.

⁴ The Notification Letter alleges, in relevant part, that the Individual has:

- (1) An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability. 10 C.F.R. § 710.8(h) (Criterion H). and, (2) Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as . . . suffering from alcohol abuse. 10 C.F.R. § 710.8(j) (Criterion J).

The Individual also testified on his own behalf. *See* Transcript of Hearing, Case No. TSO-0633 (hereinafter cited as “Tr.”).

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

The Individual acknowledges that he has habitually used alcohol to excess and suffers from alcohol abuse. Tr. at 106. Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness. *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued by the Assistant to the President for National Security Affairs*, The White House (December 29, 2005) (*Revised Guidelines*) Guideline G at 10. Accordingly, the only issue before me is whether the Individual has submitted sufficient evidence of rehabilitation and reformation to resolve the security concerns raised by his habitual use of alcohol to excess and alcohol abuse. After considering all of the evidence in the record, I find that he has done so.

Guideline G of the *Revised Guidelines* set forth four conditions that could mitigate security concerns arising from alcohol.⁵ Among those conditions are the following:

- (b) the individual acknowledges his or her alcoholism or issues of . . . alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of . . . responsible use (if an alcohol abuser);

⁵ Guideline G pertains to concerns arising from an Individual's alcohol consumption. Guideline I pertains to concerns based upon an Individual's psychological condition. While alcohol abuse is a psychological condition, Guideline I clearly indicates that it applies solely to those psychological conditions that are “not covered under any other guideline.” Guideline I at 13.

(d) the individual has successfully completed . . . counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous [(AA)] or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Revised Guidelines at 11. In this case, the DOE Psychiatrist has opined, in her Report of Examination, that the Individual would need to “satisfactorily complete a minimum of 50 hours of a professionally led substance abuse treatment program” in order to establish adequate evidence of rehabilitation.⁶ *Id.* The DOE Psychiatrist further opined that the Individual would need to “produce convincing evidence that he had not engaged in excessive drinking and/or hazardous drinking behavior for a minimum of one year since the last alcohol-related arrest (May 2007).” *Id.*

By the time of the hearing, the Individual had taken a number of important steps in order to address his alcohol abuse and excessive alcohol consumption. Specifically, the Individual provided convincing evidence that he had not engaged in excessive drinking and/or hazardous drinking behavior since the last alcohol-related arrest in May 2007, had obtained counseling, and had completed an alcohol education class. Tr. at 20, 109. The Individual also submitted convincing evidence showing that he had abstained from the use of alcohol.

At the hearing, the Individual’s testimony helped convince me that he is reformed and rehabilitated from his alcohol use and excessive alcohol consumption. The Individual forthrightly acknowledged his alcohol abuse disorder and excessive alcohol consumption. Tr. at 106, 123. The Individual has decided to permanently abstain from using alcohol. *Id.* at 112-13. The Individual attended a 12-week substance abuse education class that met for 3 hours twice a week. *Id.* at 109.

The supervisor of the substance abuse education program (the educational supervisor) testified on the Individual’s behalf. The educational supervisor’s testimony established that the Individual’s counselor had diagnosed the Individual with alcohol abuse. Tr. at 13-14, 17. The Individual attended a twelve-week educational program for six hours each week, for a total of 72 hours. *Id.* at 14. The Individual was an active and compliant participant in this program and he completed it successfully. *Id.* at 15.

The Individual’s fiancée testified on his behalf. She has known the Individual for seven years. Tr. at 26. She began dating the Individual in February 2007. *Id.* She began seeing him on a daily basis in March 2007. *Id.* at 27. They moved in together in June 2007. *Id.* at 31. When

⁶ The DOE Psychiatrist further noted that “Any future resumption of drinking alcohol to excess, engaging in alcohol-related activities leading to adverse consequences, or using non-prescribed controlled substances will be evidence that the Individual is not showing adequate evidence of rehabilitation [or] reformation.” Exhibit 3 at 20-21.

they are not working, they spend almost all of their time together. *Id.* at 31-32. She testified that, after his arrest in May 2007, she informed the Individual that his drinking to excess was “not acceptable” and that she would not allow her sons to be exposed to it. *Id.* at 29-30, 33. The Individual understands and accepts that alcohol is a problem for him. *Id.* at 43-44. She testified that the Individual has decided to give up alcohol. *Id.* at 33, 38. She believes the Individual has adjusted well to an alcohol-free lifestyle, and now leads a highly family-centered lifestyle. *Id.* at 33-35. She testified that the Individual could not be drinking without her knowledge because they are together during almost all of his free time. *Id.* at 35.

The Individual’s mother testified on his behalf. She sees him once or twice a week. Tr. at 51. She has noticed a significant change in the Individual: he has become a family man. *Id.* at 51-52. She believes that the alcohol education program “opened her son’s eyes” to the problems alcohol can cause. *Id.* at 53-55.

The Individual’s father testified on his behalf. The Individual’s father testified that his son had matured in recent months. Tr. at 86-87. His son told him that he had discontinued using alcohol and intends to do so in the future. *Id.* at 88-89. The Individual realized that alcohol has harmed him. *Id.* at 89. The Individual’s alcohol education class enabled the Individual to see what alcohol has done to others. *Id.*

The Individual’s fiancée’s mother testified on his behalf. She sees him four or five times a week, when she watches her grandchildren. Tr. at 64-67. She testified that he is a family man. *Id.* at 67-68. It has been many months since she has observed him consuming alcohol. *Id.* at 67-70. A close friend of the Individual and his family also testified that she no longer sees him consuming alcohol. *Id.* at 76. The Individual’s former supervisor testified that the Individual had been one of his best employees. *Id.* at 97.

The DOE Psychiatrist was present during the entire hearing. She testified after the other witnesses concluded their testimony. She testified that, after interviewing the Individual and reviewing the pertinent medical records, she concluded that the Individual met the criteria for alcohol abuse. Tr. at 131. After considering “the totality of the circumstances,” she further concluded that, at the time of her original evaluation, the Individual was not yet rehabilitated or reformed, although she did feel that the Individual “was going in the right direction.” *Id.* at 131-134. Her opinion that the Individual was not yet rehabilitated or reformed (at the time she originally interviewed him) was based on her belief that “it was too early to determine that his changed behavior at that time would have a long lasting impact.” *Id.* at 132-133. The DOE Psychiatrist also testified that, at the time she prepared her report, the Individual had not had “any opportunities to learn about his risks of developing more serious alcohol use disorders.” *Id.* at 133. Accordingly, she was of the opinion that the Individual, in order to establish that he had been *rehabilitated*, needed to show “that he had . . . satisfactorily complete[d] a minimum of 50 hours of a professionally-led substance abuse treatment program.” *Id.* at 133. Moreover, she was of the opinion that the Individual, in order to establish that he had been *reformed*, needed to show “he had not engaged in excessive drinking and/or hazardous drinking behavior for a minimum of one year since the last alcohol-related arrest, which was May 2007.” *Id.* at 134.

After hearing the testimony at the hearing, the DOE Psychiatrist testified that it reinforced her opinion that the Individual met the criteria for alcohol abuse. Tr. at 134. However, the DOE Psychiatrist testified that she was now convinced that the Individual had “adequately completed . . . the treatment program” and had “not engaged in excessive drinking and/or hazardous drinking behaviors since May 2007.”⁷ *Id.* at 135. The DOE Psychiatrist then testified “because of that information available to us right now, my opinion today would have been that he had fully satisfied my recommendations for adequate rehabilitation and reformation.” *Id.* Most importantly in my opinion, she testified that there is a low probability that the Individual will relapse in the foreseeable future. *Id.* at 145.

After carefully weighing all of the evidence in the record, including the testimony of the DOE Psychiatrist, I am convinced that the Individual recognizes that he suffered from alcohol abuse, is fully committed to his recovery and has provided sufficient evidence of reformation and rehabilitation. Accordingly, I am convinced that the risk that the Individual will return to excessive or hazardous alcohol use is acceptably low. The Individual has shown that he has not engaged in excessive or hazardous drinking for more than fifteen months and has been alcohol free. He has obtained education about his alcohol abuse. He is committed to sobriety in order to care for his family which includes three young children. I therefore conclude that the Individual has resolved the security concerns regarding his alcohol abuse and excessive use of alcohol.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criteria J and H. Therefore, the Individual has demonstrated that granting him a security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I find that the Individual’s security clearance should be granted. The DOE may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: September 29, 2008

⁷ At the time of the hearing, 15 months had elapsed since the Individual had last engaged in excessive or hazardous consumption of alcohol. The DOE Psychiatrist’s Report stated that the Individual would need to show that he had not engaged in excessive or hazardous consumption of alcohol for at least one year. Exhibit 3 at 20-21.